IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

MFA.No. 111 of 2003()

OPMV.233/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT: PETITIONERS 1 AND 3
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1. SASIDHARAN NAIR, MANKAD HOUSE,
KIZHAKKE CHALAKUDY DESOM & VILLAGE,
MUKUNDAPURAM TALUK.

2. PRIYA S., D/O. SASIDHARAN NAIR,
MANKAD HOUSE, KIZHAKKE CHALAKUDY DESOM
AND VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.G.P.SHINOD

RESPONDENTS:
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1. P.T.ELIAS S/O. SARAMMA,
PYMADATH HOUSE, KARAYAMPARAMBU, KARUKUTTY P.O.,
ANGAMALY.

2. T.Y.TOMY, S/O. YOHANNAN,
THADAPPALLY HOUSE, MAMBRA P.O.

3. NATIONAL INSURANCE COMPANY,
PUMP JUNCTION, ALWAYE.

4. MANJUSHA D/O. SASIDHARAN NAIR,
MANKAD HOUSE, KIZHAKKE CHALAKUDY DESOM AND
VILLAGE, MUKUNDAPURAM TALUK, NOW STUDYING AT
RUTGERS UNIVERSITY,NEW JURSEY, U.S.A.

BY ADV. SMT.SARAH SALVY
SRI.M.R.RAJESH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27.9.2007, THE COURT ON 27/09/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.111 OF 20O3

Dated this the 27th day of September, 2007

JUDGMENT

Koshy, J.

A 48 year old woman, who was employed as Second Grade Assistant in the Kerala Electricity Board, suffered fatal injuries in a motor accident on 9.12.1994. Her husband and two unmarried daughters claimed compensation amounting to Rs.9 lakhs, contending that the accident occurred due to the negligence of the vehicle driven by the second respondent. The Tribunal found that the accident occurred due to the negligent driving of the vehicle driven by the second respondent, owned by the first respondent and insured with the third respondent Insurance Company. However, the total compensation awarded was only Rs.4,96,908/-. The quantum of compensation is only disputed in the appeal. Hence we are considering that point only.

2. It has come out in evidence that the deceased was aged 48 at the time of death. Her monthly salary was Rs.7,690/- as can be seen from Exhibit A8 salary certificate. Exhibit X1 is the copy of the service book. It has also come out in evidence that if she continued

in service, at the time of retirement, she would have got Rs.18,815/- as monthly salary and on the basis of the last drawn salary, she would have received retirement benefits including pension, provident fund, gratuity etc. But, at the same time, vagaries of life cannot be predicted. Based on the dictum laid down in the Supreme Court decision reported in ***K.S.R.T.C vs. Susamma Thomas*** (1994 (1) KLT 67), it is argued by learned counsel for the appellants that future prospects also should be taken into account while calculating monthly income and the family contribution for the purpose of compensation. It was further stated that apart from the job, her service to the family as a house wife, wife of the first appellant and mother of two unmarried daughters also have to be taken into account for calculating monthly income. But the Tribunal taken the last drawn salary of the deceased at the time of accident as the basis for calculation and has taken monthly contribution to the family as Rs.5,127/-, after deducting one-third from the salary and calculated compensation for seven years. Taking into account the fact that after seven years she would have retired at the age of 55 and thereafter Rs.670/- is only taken as monthly dependency for the remaining period after retirement and the compensation was calculated. We are of the view that if such a view was taken, future prospects ought to have been taken for calculation of monthly

income. In any event, if she continued until her retirement, her pension itself would have been more than the monthly salary that she was receiving at the time of accident. After retirement she can give valuable service to the family, if she has not taken another employment. Untimely loss of mother to unmarried daughters cannot be measured in terms of money. Hence, since we are calculating compensation taking guidelines from the second schedule, we take only last drawn salary for the purpose of calculating compensation. Her last drawn salary was Rs.7,690/-. After deducting 1/3 for personal expenses, monthly contribution to the family is Rs.5,127/-. She was aged 48 at the time of accident. Hence, taking second schedule for guidance, we are of the opinion that 13 fixed as multiplier by the Tribunal requires no change. In this connection we refer to the three member Bench decision of the Supreme Court in ***Smt.Supe Dei and others v. M/s.National Insurance Company Ltd. And another*** (JT 2002(suppl.1) SC 451), and ***Safna v. Ramankutty and Others*** (2007(3) KHC 816). Recently in ***APSRTC v. M.Pentaiah Chary*** (AIR 2007 SCW 5689) after considering the decision of the Apex Court held that unless there are strong circumstances multiplier prescribed under second schedule shall not be deviated. Therefore, compensation payable for loss of dependency and family contribution is:

5,127 x 12 x 13 = 7,99,812.

The Tribunal has awarded only Rs.4,78,908/- on this count. The appellants-petitioners are entitled an additional amount of Rs.3,20,904/-. The above amount should be deposited by the third respondent Insurance Company with 7% interest from the date of application till the date of deposit over and the amount decreed by the Tribunal. On deposit of the above amount, it can be withdrawn by the claimants at the proportion fixed by the Tribunal.

The appeal is allowed partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO. 111 OF 2003

JUDGMENT

27.9.2007